IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2819 OF 2002

IN

SUIT NO. 3332 OF 2002

Smt. Zehrabibi Khan I.
Durrani & ors. ..Plaintiffs

versus

Sultana Amin Shaikh & Ors. ..Defendants

Mr. Y. V. Sanglikar i/b. D. R. Singh for the Plaintiffs.
Mr. Rajendra Sorankar for the Defendants.

CORAM : D. G. DESHPANDE,J.

DATE : 28TH OCTOBER 2004.

P.C. :

1. Heard learned counsel for the parties. This is plaintiffs notice of motion for appointment of the Receiver and other reliefs. The defendants have already made a statement that they will not part with possession or create third party rights in respect of the business of the suit premises.

2. There are two types of rights of the plaintiffs in the suit property, one as owner after the property has come to their share and in respect

of that contention of the plaintiffs, the defendants contention is that they are tenants of the premises. This contention is based upon an agreement purported to have been executed by the deceased Hajiani Sugrabai Durani on one hand and Shaikh Amin Shaikh Chote on the other hand on 23.12.1968. This agreement is entirely and completely denied by the counsel for the defendants. Whatever that may be, the claim of the tenancy is based on this agreement. So far as buisness is concerned the plaintiffs are relying upon the agreement annexed with the plaint as Exhibit 'B'. The defendants deny that agreement in its entirety. However, the licences are issued by the BMC, copies of which are filed with the plaint, and copy of which is filed with the reply to the notice of motion, shows Smt. Sugrabai as the owner of the business and Ibrahim Shaikh Chote as conductor. The defendants have nothing to show that they are the owners of the business. The running business is different thing from claiming any right in the premsies as tenants. Therefore, when the plaintiffs have strong prima facie case that they are the owners of the business than the defendants have to pay royalty to the plaintiffs.

3. Therefore, Court Receiver is appointed. The Receiver to take symbolic possession of the business and will appoint the defendants as agent of the Court Receiver on such terms and conditions as to

the royalty as the Court Receiver may deem fit and proper. Notice of Motion is disposed of.

4. All concerned parties to act on an ordinary copy of this order duly authenticated by the Court Associate.

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